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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1973

No. 73-1421

JESSE L. SMITH, PETITIONER

versus

ILLINOIS CENTRAL RAILROAD COMPANY, INTERNATIONAL PAPER COMPANY, and AMERICAN MOTORISTS INSURANCE COMPANY

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

BRUMFIELD & BRUMFIELD
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509 St. Louis Street
Baton Rouge, Louisiana 70821
Attorneys for Jesse L. Smith, Petitioner

Franklin Press, Inc. Baton Rouge, La.

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Your petitioner, Jesse L. Smith, respectfully requests that the Court reconsider its order denying his Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, in the above entitled cause, entered in this cause on May 13, 1974, and grant the Petition.

As grounds for this Petition, Petitioner requests the Court's consideration of the following grounds:

1. The decision below is in direct conflict with this Court's decision in *Rogers v. Missouri Pacific Railroad Co.*, 352 U.S. 500 (1957), in which this Court held that under the Federal Employers Liability Act, 45 U.S.C. Sec. 51 *et seq.*, a railroad is liable if its negligence played any part, even the slightest, in bringing about the accident.

2. The instruction given herein on unavoidable accident was given at the instance of the trial judge, and was requested by neither defendant. Such instruction was not supported by the evidence, and should not have been given in this action under the Federal Employers Liability Act, *Page v. St. Louis Southwestern Railway Co.*, 349 F.2d 820 (5 Cir. 1965).

3. A manifest miscarriage of justice has occurred by virtue of the failure of the courts below to apply the controlling principles of law pertaining to suits brought under the Federal Employers Liability Act which will substantially diminish the rights of other litigants invoking this statute.

CONCLUSION

For the reasons set forth in this Petition for Rehearing, as well as in the Petition for Certiorari previously filed, rehearing and certiorari should now be granted.

Respectfully submitted,

H. Alva Brumfield, III
509 St. Louis Street
P. O. Box 1486
Baton Rouge, Louisiana 70821
Attorneys for Petitioner

CERTIFICATE OF COUNSEL

I, H. Alva Brumfield, III, counsel for the above-named appellant, do hereby certify that the foregoing petition for rehearing is presented in good and faith and not for delay.

H. Alva Brumfield, III

PROOF OF SERVICE

I, H. Alva Brumfield, III, attorney for petitioner, and a member of the Supreme Court of the United States, hereby certify that on this day I served copies of the foregoing Petition for Rehearing of Order Denying Petition for Writ of Certiorari on Boris F. Navratil, Esquire, of the firm of Breazeale, Sachse & Wilson, 701 Fidelity National Bank Building, Baton Rouge, Louisiana 70801, and Roger M. Fritchie, Esquire, of the firm of Durrett, Hardin, Hunter, Dameron & Fritchie, 614 Louisiana National Bank Building, Baton Rouge, Louisiana 70801, counsel for respondents, by mailing copies in duly addressed envelopes, with first class postage prepaid.

Baton Rouge, Louisiana, this_____day of May, 1974.

H. ALVA BRUMFIELD, III